

CITY OF SAN JOSÉ, CALIFORNIA
Redevelopment Agency of the City of San Jose
50 W. San Fernando Street, Suite 1100
San José, California 95110

STAFF REPORT

Hearing Date/Agenda Number
PC Agenda: 7-9-03 Item: 3.f.

File Number
RCP03-018

Application Type
Conditional Use Permit

Council District
3

Planning Area
Downtown Core

Assessor's Parcel Number(s)
264-30-082

PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 401 South First Street

Gross Acreage: 0.13

Net Acreage: N/A

Net Density: n/a

Existing Zoning: CG

Existing Use: Parking Lot

Proposed Zoning: n/a

Proposed Use: Live entertainment and alcohol service for a 9 week outdoor concert series exceeding the 60dBA noise level of the Zoning Code

GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation
Core Area

Project Conformance: ☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Restaurant, Nightclub

CG (Commercial General)

East: Nightclub

CG (Commercial General)

South: Restaurant, Nightclub

CG (Commercial General)

West: Convention Center

CG (Commercial General)

ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete April 27, 1999
☐ Negative Declaration circulated on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: n/a

HISTORIC STATUS: Not Historic

Completed by: AG

REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions

Date: 7-9-03

Approved by: _____

Approved by: _____
☐ Action ☐ Recommendation

APPLICANT

OWNER

Jacek Rosicki
1835 Middlefield Road
Palo Alto, CA 94301

Bertram Burns
1831 Booksin Ave.
San Jose, CA 95125

PUBLIC AGENCY COMMENTS RECEIVED**Completed by: AG**

Department of Public Works

See Conditions of Approval

Other Departments and Agencies

Police Department – See Conditions of Approval

GENERAL CORRESPONDENCE

None Received

ANALYSIS AND RECOMMENDATIONS

PROJECT DESCRIPTION

The project site is located 401 South First Street. The site is developed with a 16 car parking lot in the Commercial General (CG) and (DG) Ground Floor Retail Zoning Districts. The property owner is requesting a Conditional Use Permit (CUP) to allow outdoor entertainment with alcohol service. The request would allow outdoor amplified music on 9 consecutive Thursdays from July 10th through September 4th. The “SoFA Music After Dark” program will feature live musical artists on Thursday nights (after Music in the Park) from 7:30 PM to 10:30 PM. Alcohol will be served to patrons between the hours of 7:30 PM and 10:00 PM. The entire site is currently occupied by a parking lot. The Zoning Code 20.40 requires that live entertainment uses obtain a Conditional Use Permit.

The proposed project is a joint venture involving several partners, including the San Jose Downtown Association, Filco.Events, downtown restaurants and bars, and Populus Presents. The “SoFA Music After Dark” program will be similar to an event that occurred last year at this same time on Post Street, north of the currently proposed venue. The music will be played from a stage in the parking lot at 401 South First Street. People will congregate in the parking lot, sidewalks, and street. San Salvador Street will be closed to automobile traffic during the concerts to allow the crowd to disperse in front of the stage area. Conditions have been placed upon the applicant to require that the streets remain clear of pedestrians to allow for traffic flow.

GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, entertainment-oriented uses are encouraged to locate in the Core Area, rather than in other less appropriate areas of the City, so long as they do not impact neighboring business uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation because the downtown businesses are in support the proposed outdoor concert series. The concerts will bring activity and patrons to the Downtown businesses.

The proposed use is also consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Core in that commercial uses such as civic events, parades and public celebrations are

permitted and encouraged. The Downtown Revitalization Strategy states that a prominent and attractive Downtown is a catalyst that will bring new investment, residents, business visitors and new life to the center city.

ENVIRONMENTAL REVIEW

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

Noise

The concerts typically generate noise events that are above the 60 decibels limit prescribed in the Zoning Code. The Zoning Code states that the sound pressure level generated by any use or combination of uses on a property shall not exceed 60 decibels at any property line, except upon issuance of a Conditional Use Permit as provided in Chapter 20.100 of the Zoning Code. This CUP satisfies that requirement and allows the proposed entertainment use to exceed noise levels prescribed in the Zoning Code for the duration of the outdoor concert.

The increased noise would be limited to between the hours of 7:30 and 10:30 on Thursday nights between July 10th, 2003 and September 4th, 2003 so as to minimize impacts upon surrounding neighborhoods.

ANALYSIS

The proposed project is analyzed below for conformance with the criteria and standards established in the Zoning Code for temporary outdoor uses of private property, pedestrian and vehicular traffic, and noise.

Zoning Code Criteria and Standards

The proposed project is consistent with the applicable criteria and standards for temporary outdoor uses of private property, as follows. The site is primarily paved (i.e., surface parking lot), has direct access to major and secondary thoroughfares (South Market Street and First Street), and its use will not impact the parking needs of the Convention Center, businesses or residents in the area. The main stage is 150 feet away from the nearest residence, and performances will not occur before 7:30 PM and will end at 10:30 PM. Required State permits would be secured in order to provide alcoholic beverage service to patrons. Finally, the site will be returned to its previous condition upon termination of the concerts.

Parking and Pedestrian and Vehicular Traffic

The proposed project, as conditioned, is not expected to have significant impacts on the traffic and parking levels of service in the surrounding area. The Department of Transportation has identified conditions to ensure that traffic and parking needs of the concert and adjacent uses will be met during the concert operation.

To ensure public safety, the project applicants are being required by the Police Department to close down San Salvador Street between South First Street and Market Street. The street closure will allow the crowd to more comfortably disperse in front of the concert venue, which will aid the Police in crowd control. The length of

the street closure is minimal and is not expected to have an impact on traffic in the area. Traffic will be able to circulate in an east-west direction using William Street and San Carlos Street as an alternate to San Salvador Street.

A parking lot currently operates on the project site. During the operation of the concerts, static portable signs will be placed in strategic locations to direct vehicles and pedestrians away from the residential neighborhood located south of the project site. In addition, parking patrols will be available to minimize neighborhood (i.e., Market/Alamden Neighborhood) parking impacts and to direct traffic to the appropriate parking facilities.

SoFA concert events have a capacity of 800 people. Staff estimates that a maximum of 400 parking spaces are needed to serve the concert patrons. Several public parking lots are available for the patrons of the concert. Public parking spaces are available in the following lots:

1. Convention Center Parking - 900 spaces
2. 303 Almaden – 400 spaces
3. Almaden Ave. and Woz Way – 365
4. Woz Way and Highway 87 – 200 spaces
5. 1st Street and San Carlos Street – 200 Spaces

Land Use Compatibility

The subject property is surrounded by commercial uses in all directions except to the north where there are approximately 13 studio apartments approximately 250 feet from the concert site, each of which has been notified of the application. The concerts will be limited to Thursday nights within a set schedule so as not to disturb neighbors late at night. The proposed concert series will only be allowed to play amplified music between the hours of 7:30 to 10:30 so as to minimally disturb residents.

There are currently no other residential uses within 500 feet of the subject property, to the south there is a restaurant and bar, to the east there is another nightclub, and to the west there is vacant auto related business and parking lot. The proposed use, located in the Downtown Core, adjacent to other similar uses with similar hours of operation, is compatible with existing adjacent commercial land uses such as Pollyesther's, Spy Club, and Zoe. In addition, the Police Department supports the CUP, as conditioned.

Public Outreach

Notice of the proposed project was circulated to properties within 300 feet of the subject property.

Parking

The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking was constructed on the Marriott site for patrons. Nearby parking facilities (i.e., public garage, on-street parking) will also be able to serve patrons and employees of the facility. No additional parking is required as a part of the approval of this CUP.

CONCLUSION

Based on the analysis above, Staff believes that the with the criteria and standards established in the Zoning Ordinance for temporary outdoor uses of private property, pedestrian and vehicular traffic, and noise. In addition, the conditions of approval (below) will help to ensure the project's operational compatibility within its surroundings

FACTS

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This project site has a designation of Core Area on the San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the Commercial General (CG) Zoning District.
3. Environmental clearance for this project was granted through the Final Supplemental EIR entitled, "Downtown Strategy Plan," certified on April 27, 1999, by City Council Resolution #68839.
4. The proposed project is subject to the Zoning Code criteria and standards for temporary outdoor uses of private property as defined in Title 20 of the San Jose Municipal Code. The proposed project is consistent with the *Strategy 2000* plan for the Downtown Core.
5. The concerts will be allowed at the subject site between July 10 and September 4, 2003.
6. The outdoor concert series will provide 9 live performances.
7. There will be no more than one performance, per week, on Thursday nights between the hours of 7:30 PM and 10:30 PM with alcohol service allowed between 7:30 PM and 10:00 PM.
8. The project site is approximately 0.13 gross acres.
9. Temporary structures, including stages, generators and an area for beer sales, will be set up on the site during the operation of the live concerts.
10. There are several public parking lots in the vicinity of the subject site.
11. The primary temporary stage structure is approximately 250 feet from the nearest residence.
12. This CUP allows the outdoor concert events to exceed noise levels prescribed by the Zoning Code.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José in that commercial uses such as civic events, parades and public celebrations are permitted and encouraged.
3. The proposed project complies with all applicable provisions of the Zoning Ordinance in that temporary entertainment uses are permitted with the approval of a Conditional Use Permit.
4. The proposed project is in compliance with the California Environmental Quality Act in that it does not include additional impacts to those addressed in the Downtown EIR.
5. The proposed project is consistent with the criteria and standards established in the Zoning Ordinance for short-term uses in that the operation in that the proposed project is consistent with the applicable criteria and standards for temporary outdoor uses of private property.
6. The proposed project would not have significant parking and traffic impacts on the surrounding area due to the conditions of approval that are included as part of this permit that will minimize parking and traffic impacts.
7. The proposed project would not have significant adverse impacts on the single-family residences along Balbach Street due to the conditions of approval that are included as part of this permit that will minimize parking and traffic impacts.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not;
 - a) Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b) Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c) Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a) By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b) By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The “Acceptance of Permit and Conditions” form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, “SoFA Music After Dark”, on file with the Redevelopment Agency of the City of San Jose (San José Municipal Code, Title 17, Chapter 17.04). Stages and equipment are alloed on the subject site as shown on the plans. Equipment shall not be set up on the public street or sidewalk.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

4. **Refuse and Site Cleanup.** All trash areas shall be effectively covered and maintained in an orderly state to prevent water from entering into the garbage container. The applicant shall ensure the daily cleanup and maintenance of the site and the prompt removal of refuse, as often as is warranted, during the duration of the concert.
5. **Sign Approval.** No signs are approved at this time. All proposed signs, including temporary signage, shall be subject to approval by the Director of Planning. All signage shall be removed by the applicant upon cessation of the temporary event.
6. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
7. **Construction Plans.** This permit file number, RCP03-018, shall be printed on all construction plans submitted to the Building Division.
8. **Duration.** The concert series may operate at the subject site on Thursday nights between July 10th, 2003 through September 4th, 2003 between the hours of 7:30 PM and 10:30 PM.
9. **ABC Licensing.** The applicant shall comply with all requirements of the State Alcohol Beverage Control Board regarding alcoholic beverage sales.
10. **County Health Department Permits.** The applicant shall comply with all requirements of the County Health Departments regarding beverage sales.
11. **Sanitary.** Public restrooms shall be provided at the project site for the duration of the concert.
12. **On-Site Security.** The applicant shall provide on-site uniformed security personnel during the duration of the concerts to the satisfaction of the Chief of Police.
13. **Site Reversion.** The applicant shall clean up and return the site to its prior condition within 24 hours after the completion of the concerts.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **Concert Patron Notification.** The applicant and/or concert promoter shall encourage patrons to use public transit in traveling to and from the site, publicizing the easy accessibility of the site via bus routes, light rail, and Caltrain. Patrons who drive shall be encouraged to park in nearby lots where known excess capacity exists.
16. **Parking Diversion Signage and Parking Control.** The applicant shall ensure that the San Salvador Street between South First Street and South Market Street is blocked off to traffic. The project applicant shall pay all costs of the street closure and required diversion signage. Department of Transportation will provide static portable signs to facilitate diversion of event patrons from the project site to parking facilities. The signs' design specifications shall be determined by the Department of Transportation.

17. **Concert Event Provisions.** The property owner and/or concert promoter shall make provisions for each of the following:
- refuse disposal and sufficient trash receptacles within the event site;
 - litter removal within a 300 foot radius of the boundaries of the event site. The applicant shall be responsible for reimbursing the City for the direct cost of litter removal within the 300 foot radius in the event the applicant fails to comply with this requirement;
 - sanitary facilities, including adequate restrooms and/or portable toilets.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire one year from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such one-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit was approved by the Planning Commission. A Permit Adjustment may be filed to allow minor changes, such as schedule changes, to the project. The Director of Planning must conclude, in consultation with the Department of Transportation and other owners of Downtown businesses, that the conditions of this Permit adequately address the parking and traffic needs of both downtown businesses and concert patrons. If this conclusion cannot be made, or if the Permit Adjustment is not submitted in a timely manner, a new Conditional Use Permit application must be filed.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - The use as presently conducted creates a nuisance.